



Deposition of:
William Graylin

August 31, 2021

In the Matter of:
**Anywhere Commerce Inc., Et Al. Vs.
Ingenico Inc., Et Al.**

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<p style="text-align: right;">Page 34</p> <p>1 A Correct.</p> <p>2 Q Later on in this paragraph, it says, "When</p> <p>3 confronted by Graylin on August 29, 2012, to</p> <p>4 stop transferring IP to Ingenico and to</p> <p>5 catalog information Rotsaert obtained,</p> <p>6 Rotsaert forwarded the files he obtained and</p> <p>7 admitted" that -- "the quote, "The most</p> <p>8 interesting document is the schematics." Do</p> <p>9 you have a recollection of that?</p> <p>10 A Yeah, I remember. Yeah.</p> <p>11 Q Does the paragraph accurately reflect your</p> <p>12 recollection?</p> <p>13 A It accurately reflected what I remembered.</p> <p>14 Q What do you recall you understood him to</p> <p>15 mean, your understanding, when he said or</p> <p>16 wrote to you, "The most interesting documents</p> <p>17 are the schematics"?</p> <p>18 MR. WRAY: Objection, vague.</p> <p>19 Compound.</p> <p>20 A He just meant that he was -- he had access to</p> <p>21 -- at least seen it and then, you know, he</p> <p>22 found that to be the most interesting.</p> <p>23 Q What were the schematics?</p> <p>24 A Schematics are basically diagrams for -- for</p>	<p style="text-align: right;">Page 36</p> <p>1 and Rotsaert included industrial design files</p> <p>2 from ROAM's new reader products," was that</p> <p>3 intellectual property that belonged to BBPOS?</p> <p>4 MR. WRAY: Objection, lack of</p> <p>5 foundation.</p> <p>6 A Yeah, that says it's ROAM intellectual</p> <p>7 property on some of what we were -- it was</p> <p>8 our requirement. And BBPOS, at that point,</p> <p>9 is considered a vendor to help us build it.</p> <p>10 So they had their IP and we have our IP,</p> <p>11 so...</p> <p>12 Q When -- in Paragraph 49 it says, "Rotsaert</p> <p>13 freely admitted to multiple people inside of</p> <p>14 ROAM that Ingenico planned on building a</p> <p>15 competing EMV reader, and they would study</p> <p>16 ROAM's industrial design, and make their own.</p> <p>17 He even suggested that ROAM should cancel the</p> <p>18 final industrial design for its EMV reader."</p> <p>19 Do you recall, was that accurate at the time</p> <p>20 it was in the complaint?</p> <p>21 A Yes.</p> <p>22 Q Do you still believe that it was accurate?</p> <p>23 A Yes. And that was -- those were just what --</p> <p>24 what I learned at the time.</p>
<p style="text-align: right;">Page 35</p> <p>1 how you lay out a circuit board and, you</p> <p>2 know, design a circuit board.</p> <p>3 Q Okay. And a circuit board for what?</p> <p>4 A For the BBPOS products.</p> <p>5 Q Did BBPOS also play a role in helping ROAM to</p> <p>6 design your reader products?</p> <p>7 A We collaborated with them on what we needed</p> <p>8 for our market and then they did the work in</p> <p>9 building the hardware.</p> <p>10 Q Okay. In building the hardware, were they</p> <p>11 integrating both their own patents and</p> <p>12 intellectual property and anything that</p> <p>13 belonged to ROAM?</p> <p>14 MR. WRAY: Objection, vague.</p> <p>15 THE WITNESS: Say that again.</p> <p>16 Q Was BBPOS using its own intellectual property</p> <p>17 when it was building the new readers?</p> <p>18 A Yeah, it would -- I mean, they're the --</p> <p>19 they're the manufacturer and the engineering</p> <p>20 firm that designed the product. We provided</p> <p>21 our requirement, but they ended up designing</p> <p>22 the product and manufacturing for us.</p> <p>23 Q So in Paragraph 49 when it says, "Other ROAM</p> <p>24 intellectual property transferred to Ingenico</p>	<p style="text-align: right;">Page 37</p> <p>1 Q Do you know who Rotsaert -- do you recall</p> <p>2 specifically who Rotsaert freely spoke to</p> <p>3 respecting the admission that Ingenico</p> <p>4 planned on building the competing EMV reader?</p> <p>5 A I don't remember who specifically it was.</p> <p>6 Q What do you recall of your dealings with Mr.</p> <p>7 Rotsaert around this time respecting his</p> <p>8 transfer of BBPOS' intellectual property to</p> <p>9 Ingenico?</p> <p>10 MR. WRAY: I'm sorry. Is there a way</p> <p>11 to have that question read back?</p> <p>12 THE WITNESS: Something about whether</p> <p>13 Rotsaert knows the transfer of intellectual</p> <p>14 property for BBPOS or something like that.</p> <p>15 MR. KESSLER: Yeah.</p> <p>16 THE WITNESS: You can ask it again if</p> <p>17 you --</p> <p>18 MR. KESSLER: Yeah.</p> <p>19 THE WITNESS: -- want.</p> <p>20 BY MR. KESSLER:</p> <p>21 Q Do you recall your interactions with Mr.</p> <p>22 Rotsaert around that time respecting any</p> <p>23 transfer of intellectual property belonging</p> <p>24 to BBPOS from ROAM to Ingenico?</p>

<p style="text-align: right;">Page 38</p> <p>1 A At that time, I did -- I believe I have a</p> <p>2 interaction with Rotsaert about, you know,</p> <p>3 accessing our intellectual property and these</p> <p>4 -- these comments, right? So this is what --</p> <p>5 what -- you know, I felt Rotsaert was -- was</p> <p>6 supposed to keep our intellectual property to</p> <p>7 us at that time.</p> <p>8 Q Okay.</p> <p>9 A Because we have access to -- we have access</p> <p>10 to our intellectual property and BBPOS</p> <p>11 provided us some access -- of course, not all</p> <p>12 access -- to their intellectual property.</p> <p>13 This is independent of the -- the acquisition</p> <p>14 discussion that we had. So the acquisition,</p> <p>15 due diligence, I think they exposed, you</p> <p>16 know, more things to the Ingenico team than</p> <p>17 what BBPOS would otherwise probably provide</p> <p>18 to us as their -- you know, as their</p> <p>19 distribution partner.</p> <p>20 Q What do you recall the content of your</p> <p>21 conversations with Mr. Rotsaert being?</p> <p>22 A I don't recall specifically the conversation.</p> <p>23 But I remember just, you know, he was in and</p> <p>24 around our building. We had some issues with</p>	<p style="text-align: right;">Page 40</p> <p>1 speak with any attorneys representing you</p> <p>2 respecting this deposition?</p> <p>3 A I have no one representing me.</p> <p>4 Q Okay. Did you speak of the substance of this</p> <p>5 deposition and its -- sort of the nature of</p> <p>6 this meeting with me at any point?</p> <p>7 A No.</p> <p>8 Q Okay. Did you discuss the substance of this</p> <p>9 deposition with anybody representing the</p> <p>10 defendants at any point?</p> <p>11 A No.</p> <p>12 Q Okay. Did you review any e-mails in</p> <p>13 preparation for this deposition?</p> <p>14 A No.</p> <p>15 Q All right. You came in cold.</p> <p>16 A Cold.</p> <p>17 Q All right. Let's look at Exhibit 3. I want</p> <p>18 to ask you if you recognize what it is.</p> <p>19 MR. WRAY: One moment, please. I</p> <p>20 noticed this is marked "Highly Confidential."</p> <p>21 MR. KESSLER: Okay.</p> <p>22 MR. WRAY: Has Mr. Graylin signed a</p> <p>23 protective order?</p> <p>24 Q Have you signed a protective order, sir?</p>
<p style="text-align: right;">Page 39</p> <p>1 -- with him, you know, which I stated in</p> <p>2 here.</p> <p>3 Q When you say, "stated in here," you stated in</p> <p>4 the complaint?</p> <p>5 A In the complaint, yeah. Which included, you</p> <p>6 know, our product roadmap and -- and so</p> <p>7 forth.</p> <p>8 Q Okay. We've got -- let me find another</p> <p>9 document I'd like to mark for you. It may</p> <p>10 take a moment.</p> <p>11 MR. KESSLER: Let's mark this as</p> <p>12 Exhibit 3.</p> <p>13 (Whereupon, Exhibit No. 3, E-mails regarding</p> <p>14 allegations between Chris and William, is</p> <p>15 marked for identification.)</p> <p>16 MR. WRAY: Thank you.</p> <p>17 MR. KESSLER: Okay. Thank you.</p> <p>18 Q Before we even look at that, let me ask, what</p> <p>19 did you do to prepare the -- to prepare for</p> <p>20 this deposition today?</p> <p>21 A Nothing.</p> <p>22 Q Okay. And you spoke with -- I don't need to</p> <p>23 know the contents of any conversation you</p> <p>24 might have had with counsel, but did you</p>	<p style="text-align: right;">Page 41</p> <p>1 A What's -- a protective order for --</p> <p>2 MR. KESSLER: You know, I'll get a</p> <p>3 copy of the printed word. Do you have an</p> <p>4 objection to us proceeding now?</p> <p>5 MR. WRAY: I think, under the terms</p> <p>6 of the protective order, before you use this</p> <p>7 in the deposition you should review it, sign</p> <p>8 it, and agree to be bound by it.</p> <p>9 MR. KESSLER: Okay. We don't -- why</p> <p>10 don't we adjourn so we can get that taken</p> <p>11 care of? That part is going to just -- it's</p> <p>12 going to lengthen the time of the deposition,</p> <p>13 but it's something --</p> <p>14 THE WITNESS: I mean, this is -- I</p> <p>15 mean, these documents are just previous</p> <p>16 e-mails between me and -- and Coonen, right?</p> <p>17 MR. KESSLER: Yes. You know, and I</p> <p>18 agree, it's -- you know, it is e-mails</p> <p>19 between you and Coonen, but opposing counsel</p> <p>20 is raising this objection and I want to work</p> <p>21 with opposing counsel on this. So we're</p> <p>22 going to adjourn the deposition while I get a</p> <p>23 copy of that. Sorry, it's going to -- it's</p> <p>24 just going to prolong the deposition, but we</p>

<p style="text-align: right;">Page 46</p> <p>1 -- of IP that would basically mean, you know,</p> <p>2 less revenue for us to be able to -- to do</p> <p>3 with our own product line.</p> <p>4 Q Were you concerned about the transfer of</p> <p>5 ROAM's IP?</p> <p>6 A Yeah.</p> <p>7 Q Were you also concerned about the transfer of</p> <p>8 BBPOS' IP?</p> <p>9 A Sure. Because that's part -- you know,</p> <p>10 there's -- there's a part of that that</p> <p>11 belongs to BBPOS.</p> <p>12 Q Were you concerned about the transfer helping</p> <p>13 Ingenico to build a competing product?</p> <p>14 A Yes. At that time, you know, that was part</p> <p>15 of our -- part of the discussions that I</p> <p>16 wanted to have with -- with Philippe, you</p> <p>17 know, and I wanted to -- I wanted to bring</p> <p>18 attention to that at the next board meeting.</p> <p>19 MR. WRAY: I object to that question.</p> <p>20 It's vague.</p> <p>21 Q I think it's a little late. Let's move on to</p> <p>22 -- I see Section -- I see bullet point 3 --</p> <p>23 or number 3. It says "Controls and</p> <p>24 operational constraints by the majority</p>	<p style="text-align: right;">Page 48</p> <p>1 statement here.</p> <p>2 Q Got it. I want to ask you now -- I want to</p> <p>3 mark something else. I want to mark this as</p> <p>4 Exhibit 5.</p> <p>5 (Whereupon, Exhibit No. 5, Continuation of e-mails</p> <p>6 between Chris and William, is marked for</p> <p>7 identification.)</p> <p>8 MR. WRAY: Thank you.</p> <p>9 Q What is Exhibit 5?</p> <p>10 A Yeah. This is just a follow-on from earlier,</p> <p>11 a --</p> <p>12 Q Okay.</p> <p>13 A -- continuation of my dialogue with Rotsaert.</p> <p>14 Q Okay.</p> <p>15 A Yeah.</p> <p>16 Q When you write, "Just because you sent me an</p> <p>17 e-mail to me does not mean you have my</p> <p>18 agreement and my permission to start</p> <p>19 transferring IP that does not belong to</p> <p>20 Ingenico. Your assumption that the reader IP</p> <p>21 belongs to ROAM was already incorrect. And</p> <p>22 to further transfer them further to Ingenico</p> <p>23 without my explicit permission and without</p> <p>24 any commercial agreement in place was a real</p>
<p style="text-align: right;">Page 47</p> <p>1 investor exerted onto the company, not part</p> <p>2 of the Investor Rights Agreement, that can</p> <p>3 harm the value of ROAM's shareholders. One,</p> <p>4 the BBPOS relationship is critical to ROAM.</p> <p>5 Ingenico's interference with its acquisition</p> <p>6 and the current commercial negotiations can</p> <p>7 damage its relationship and harm the value to</p> <p>8 ROAM's shareholders irreparably. Damaging</p> <p>9 the relationship with BBPOS can lead to a</p> <p>10 loss of IP, revenue, along with technical</p> <p>11 capabilities to ROAM which will make a large</p> <p>12 negative impact on ROAM's valuation." Do you</p> <p>13 recall what you were concerned about when you</p> <p>14 wrote that bullet point 1?</p> <p>15 A Yeah. Basically, you know, we wanted to make</p> <p>16 an acquisition of BBPOS at the time. I</p> <p>17 recommended it. My perception was that BBPOS</p> <p>18 was an important part of helping us grow our</p> <p>19 revenue. So, you know, I had a concern about</p> <p>20 them interfering with our acquisition -- you</p> <p>21 know, our desire to -- to have an</p> <p>22 acquisition. But, you know, ultimately, that</p> <p>23 deal didn't happen, but, you know, it's</p> <p>24 pretty well -- pretty well reflected in my</p>	<p style="text-align: right;">Page 49</p> <p>1 mistake." I'm a little curious. When you</p> <p>2 write, "Your assumption that the reader IP</p> <p>3 belongs to ROAM was already incorrect," do</p> <p>4 you recall what you meant?</p> <p>5 A So there are two parts of the IP. Part of it</p> <p>6 is our requirements, our design, our -- our</p> <p>7 form factor. And then there's other</p> <p>8 components because they are the engineering</p> <p>9 firm that -- that built it -- were licensing</p> <p>10 their technology. Basically, you know, two</p> <p>11 parts are all mixed.</p> <p>12 Q Okay. And when you say the two parts are</p> <p>13 mixed, does -- did BBPOS own some of that</p> <p>14 reader IP then?</p> <p>15 A I mean it's their -- their hardware design,</p> <p>16 our form factor.</p> <p>17 Q Okay. So I'll just ask it again. Is that --</p> <p>18 some of that IP is --</p> <p>19 A Some of it is -- belongs to BBPOS.</p> <p>20 Q Okay. Now, do you recollect Rotsaert</p> <p>21 believing that all of the reader IP belonged</p> <p>22 to ROAM as opposed to only some of it?</p> <p>23 A He may be under the assumption that all of</p> <p>24 that belongs to ROAM. But, you know, to me</p>

<p style="text-align: right;">Page 50</p> <p>1 there's a component that -- that belongs to</p> <p>2 BBPOS. And so in my -- in my opinion, he</p> <p>3 shouldn't have done that.</p> <p>4 Q Okay. And with respect to the BBPOS</p> <p>5 intellectual property that he transferred</p> <p>6 from ROAM to Ingenico, why should he not have</p> <p>7 done that?</p> <p>8 A It says we -- I stated in here, you know, we</p> <p>9 don't have in a -- you know, it's ROAM, which</p> <p>10 is still a separate entity from -- from</p> <p>11 Ingenico. You know, ROAM has an agreement</p> <p>12 with BBPOS, but Ingenico does not have an</p> <p>13 agreement directly with BBPOS.</p> <p>14 Q Do you know why Ingenico was transferring</p> <p>15 BBPOS' IP from ROAM to itself?</p> <p>16 MR. WRAY: Objection. Misstates</p> <p>17 testimony. Leading.</p> <p>18 A Well, I can tell you, you know, from</p> <p>19 Christopher Rotsaert's point of view, he was</p> <p>20 looking at -- and he was product management</p> <p>21 so he was partly supposed to help me with</p> <p>22 product management, but he was also probably</p> <p>23 thinking that the property -- and we have</p> <p>24 NDAs between ROAM and -- and Ingenico, so he</p>	<p style="text-align: right;">Page 52</p> <p>1 A A, there should be a -- you know, there</p> <p>2 should be a commercial agreement. If ROAM</p> <p>3 Data's products was going to be produced by</p> <p>4 Ingenico, we need a commercial agreement</p> <p>5 because, A, that would take away our revenue</p> <p>6 source, so ROAM and Ingenico does not have a</p> <p>7 commercial agreement about, you know,</p> <p>8 development of this, you know, additional</p> <p>9 product. So that was my reference primarily.</p> <p>10 Q Yes. Would it also negatively impact BBPOS?</p> <p>11 A Well, we pay a royalty to BBPOS. So as -- as</p> <p>12 a result, that also can impact our partners.</p> <p>13 Q When you wrote, "Your actions and assumptions</p> <p>14 are threatening the very fabric of ROAM's</p> <p>15 relationship with its most important</p> <p>16 supplier," who was the most important</p> <p>17 supplier you're referencing there?</p> <p>18 A I was referencing BBPOS.</p> <p>19 Q Okay. And why did you feel that Mr.</p> <p>20 Rotsaert's actions and assumptions was</p> <p>21 threatening the very fabric of that</p> <p>22 relationship?</p> <p>23 A For this -- his assumptions and his actions</p> <p>24 of transferring data basically feel like it's</p>
<p style="text-align: right;">Page 51</p> <p>1 probably felt that, you know, he was going to</p> <p>2 transfer -- my concern, of course, was he was</p> <p>3 going to transfer information over to</p> <p>4 Ingenico and Ingenico can, you know, create a</p> <p>5 competing product. That was my concern. My</p> <p>6 other concern was that, you know, him</p> <p>7 transferring -- transferring data to Ingenico</p> <p>8 contained some parts of IP that -- that not</p> <p>9 just belonged to us, but also belonged to</p> <p>10 someone else.</p> <p>11 Q And did Ingenico create a competing product?</p> <p>12 A That was after my -- you know, I was -- I was</p> <p>13 terminated from my employment days after this</p> <p>14 e-mail.</p> <p>15 Q So do you know one way or another whether</p> <p>16 Ingenico created a competing product?</p> <p>17 A I couldn't tell you for sure because I was no</p> <p>18 longer involved.</p> <p>19 Q When you say that it was -- "To further</p> <p>20 transfer them further to Ingenico without my</p> <p>21 explicit permission and without any</p> <p>22 commercial agreement in place was a real</p> <p>23 mistake," commercial agreement in place with</p> <p>24 whom?</p>	<p style="text-align: right;">Page 53</p> <p>1 -- it's -- you know, it's not good for our</p> <p>2 relationship between BBPOS and ROAM. It</p> <p>3 certainly hurts ROAM. And I think it can</p> <p>4 hurt BBPOS as well. But, you know, we should</p> <p>5 have respect for their intellectual property.</p> <p>6 And so at that time, what I saw Rotsaert</p> <p>7 wrote was that he was making assumptions that</p> <p>8 that intellectual property belonged to ROAM</p> <p>9 and that he could, you know, transfer it. It</p> <p>10 says, "If ROAM has been using BBPOS' design"</p> <p>11 -- you know, he's making the -- the inference</p> <p>12 that he thinks he should be able to transfer</p> <p>13 it and I disagreed.</p> <p>14 Q Okay. And do you have -- do you still</p> <p>15 disagree, one way or another?</p> <p>16 MR. WRAY: Objection. Vague.</p> <p>17 A For me, I think, what I wrote at the time was</p> <p>18 -- was my disagreement with Mr. Rotsaert and,</p> <p>19 you know, to me that was pretty well-written</p> <p>20 on paper.</p> <p>21 Q Got it. When you wrote, "There is an</p> <p>22 apparent lack of respect for the IP or</p> <p>23 BBPOS," is that supposed to be "of BBPOS," or</p> <p>24 is it "or BBPOS"? Do you know?</p>

<p style="text-align: right;">Page 54</p> <p>1 A I think it should be of as opposed to or.</p> <p>2 Q Why do you think there was a disrespect from</p> <p>3 Mr. Rotsaert toward the IP of BBPOS?</p> <p>4 A Pretty well, as I stated -- I mean, you don't</p> <p>5 -- you don't normally transfer, you know,</p> <p>6 data to another development team without</p> <p>7 permission from either me as the CEO of ROAM</p> <p>8 or some kind of an agreement, you know, from</p> <p>9 -- from BBPOS.</p> <p>10 Q Were you concerned about Ingenico</p> <p>11 reverse-engineering the IP that they'd</p> <p>12 received that --</p> <p>13 A Well, my --</p> <p>14 Q -- was BBPOS'?</p> <p>15 A -- my concern was a competing product that</p> <p>16 competed against our distribution which had</p> <p>17 wrong data at the time. So this is why I</p> <p>18 raised the issue and, you know, whether they</p> <p>19 continued on with that process after I was</p> <p>20 terminated, that was -- you know, that's</p> <p>21 something separate.</p> <p>22 Q Got it.</p> <p>23 A But, you know, I raised my -- raised my</p> <p>24 concerns to Mr. Rotsaert and also to, you</p>	<p style="text-align: right;">Page 56</p> <p>1 the relationship between HomeATM and BBPOS?</p> <p>2 Do you recollect that?</p> <p>3 A I remember there's some relationship between</p> <p>4 -- Ben was telling me some -- some</p> <p>5 relationship between them. I can't really</p> <p>6 recall what the exact relationship between --</p> <p>7 between these guys -- is that when they</p> <p>8 changed their name later to AnywhereCommerce</p> <p>9 or Anywhere --</p> <p>10 Q I'm just trying to get your memory of --</p> <p>11 A Yeah.</p> <p>12 Q -- HomeATM, but if you don't --</p> <p>13 A Yeah. I mean --</p> <p>14 Q -- it's fine.</p> <p>15 A -- yeah, I mean, there's -- most of my</p> <p>16 dealings was with Ben.</p> <p>17 Q You've mentioned acquisition prior. Was</p> <p>18 there a point in time in which there was a</p> <p>19 consideration of acquisition from ROAM for</p> <p>20 Ingenico to BBPOS?</p> <p>21 A More from ROAM. I mean, I was trying to make</p> <p>22 the acquisition.</p> <p>23 Q What's your recollection of your records to</p> <p>24 make the acquisition?</p>
<p style="text-align: right;">Page 55</p> <p>1 know, Philippe and Christopher.</p> <p>2 Q And when you say Christopher, do you mean</p> <p>3 Christopher Coonen?</p> <p>4 A Right. And Philippe --</p> <p>5 Q And Philippe Lazare?</p> <p>6 A Correct.</p> <p>7 Q Okay. How long after this -- okay. Thank</p> <p>8 you for testifying about this e-mail. I</p> <p>9 appreciate it.</p> <p>10 A Yep.</p> <p>11 Q How long after you sent this e-mail on</p> <p>12 September 17, 2012, were you terminated from</p> <p>13 your position at ROAM?</p> <p>14 A It was the following board meeting, so I</p> <p>15 think it was later that month.</p> <p>16 Q Later in the month of September?</p> <p>17 A If I recall the board meeting being -- yeah,</p> <p>18 that month.</p> <p>19 Q Okay. So roughly within two weeks of sending</p> <p>20 this --</p> <p>21 A Yeah. Yeah.</p> <p>22 Q -- e-mail you were terminated?</p> <p>23 A Correct. Right.</p> <p>24 Q All right. Did you have an understanding of</p>	<p style="text-align: right;">Page 57</p> <p>1 A I made a proposal, and -- and then, I think,</p> <p>2 Ingenico wanted to do some due diligence</p> <p>3 also. And so I think ultimately after the</p> <p>4 experience, Ben ended up rejecting the -- the</p> <p>5 deal and it never took place.</p> <p>6 MR. KESSLER: Okay. Let me mark this</p> <p>7 as Exhibit 6.</p> <p>8 (Whereupon, Exhibit No. 6, Summary of terms of</p> <p>9 acquisitions of BBPOS, is marked for</p> <p>10 identification.)</p> <p>11 MR. KESSLER: Thank you.</p> <p>12 Q Please take all the time you need to feel</p> <p>13 comfortable with it. My first question is:</p> <p>14 Do you know what it is, Exhibit 6?</p> <p>15 A It looks like our term sheet, yeah.</p> <p>16 Q When you say, "Our term sheet," you mean the</p> <p>17 term sheet respecting the acquisition --</p> <p>18 proposed acquisition of BBPOS by ROAM Data?</p> <p>19 A Yeah.</p> <p>20 Q Okay. Did you have a hand in negotiating</p> <p>21 this?</p> <p>22 A Yeah.</p> <p>23 Q What role did you play in negotiating this?</p> <p>24 A I was -- I was the CEO, so I had a signed</p>

<p style="text-align: right;">Page 98</p> <p>1 chip -- did the Telium solution relate to</p> <p>2 ROAM's solution for its readers?</p> <p>3 A Telium in ROAM?</p> <p>4 Q Uh-huh.</p> <p>5 A When I was there, I don't -- I don't remember</p> <p>6 if -- I don't think we had any Telium</p> <p>7 solution that we sold.</p> <p>8 Q Was there ever an effort to integrate the</p> <p>9 solution being pursued by Ingenico with the</p> <p>10 solutions that had already been found by</p> <p>11 ROAM?</p> <p>12 A I think we had discussions about a</p> <p>13 longer-term roadmap. But I don't remember</p> <p>14 where the Telium solution ended up going.</p> <p>15 Q Let me mark this as -- thank you. This is a</p> <p>16 short Exhibit 13. Ingenico Inc. 0069335.</p> <p>17 Do you recognize this?</p> <p>18 (Whereupon, Exhibit No. 13, E-mail from Ben Lo, is</p> <p>19 marked for identification.)</p> <p>20 A It looks like a notification for -- for them</p> <p>21 sending samples.</p> <p>22 Q Okay. And samples of what?</p> <p>23 A Samples of a reader, G4X in PayPal form</p> <p>24 factor.</p>	<p style="text-align: right;">Page 100</p> <p>1 one's pretty standard. This is us getting</p> <p>2 samples to our team just knowing, you know,</p> <p>3 when we can start testing and potentially</p> <p>4 selling.</p> <p>5 Q Okay. I was not sure. So I mean, who is</p> <p>6 Landi?</p> <p>7 A Landi is -- was. I don't know where it is</p> <p>8 now -- Ingenico's subsidiary in China. It</p> <p>9 was a Chinese -- Chinese company that made</p> <p>10 POS for China market.</p> <p>11 Q Do you recall ever informing Ben Lo that</p> <p>12 Ingenico was passing information to Landi for</p> <p>13 making terminals to compete with BBPOS?</p> <p>14 A Yeah. I think those were some of the</p> <p>15 discussions that we had.</p> <p>16 Q And what was the basis for your understanding</p> <p>17 of that?</p> <p>18 A I don't remember how I learned about their</p> <p>19 connections with -- well, Ingenico and Landi</p> <p>20 obviously very close, and I think when we</p> <p>21 were talking about next-generation product,</p> <p>22 they wanted us to -- to ultimately use maybe</p> <p>23 their own product. But, you know, that was</p> <p>24 -- I think Landi was -- was building products</p>
<p style="text-align: right;">Page 99</p> <p>1 Q Okay. And what's the significance of having</p> <p>2 them sent to Boston by FedEx?</p> <p>3 A That way we can check it out and see if it</p> <p>4 works.</p> <p>5 Q Okay. Now, I noticed that Christopher</p> <p>6 Rotsaert is copied on this?</p> <p>7 A Uh-huh.</p> <p>8 Q What role would he play in checking out the</p> <p>9 six samples of G4X sent by Ben Lo?</p> <p>10 A I think it was in the same time period. Same</p> <p>11 thing, we were trying to -- trying to get G4X</p> <p>12 as a product on our roadmap to sell.</p> <p>13 Q And was Mr. Rotsaert working at this point in</p> <p>14 his capacity as an employee of ROAM or in his</p> <p>15 capacity as an employee of Ingenico?</p> <p>16 A I think that was the same -- same deal.</p> <p>17 During that time he was -- he was half paid</p> <p>18 by us and half paid by -- by Ingenico. But</p> <p>19 he was supposed to be in our office working</p> <p>20 for us.</p> <p>21 Q Okay. So did this -- does this e-mail raise</p> <p>22 any concerns as other e-mails in terms of Mr.</p> <p>23 Rotsaert's sending of materials to Ingenico?</p> <p>24 A No. I mean, I think this is pretty -- this</p>	<p style="text-align: right;">Page 101</p> <p>1 in China, POS products.</p> <p>2 Q Did you understand that there was an effort</p> <p>3 by Ingenico then to compete with BBPOS in</p> <p>4 China?</p> <p>5 A I don't know if it's just in China versus</p> <p>6 they're -- Landi clearly was already building</p> <p>7 and selling POS in China but it was more</p> <p>8 competing against</p> <p>9 all POS vendors for, you know, the mobile phone POS</p> <p>10 which is another category.</p> <p>11 Q Okay. Was there some concern though that</p> <p>12 Ingenico was supplying Landi with mobile POS</p> <p>13 solutions?</p> <p>14 A Was there any concern that Ingenico was</p> <p>15 providing Landi with the POS solutions that</p> <p>16 we were working on --</p> <p>17 Q Yes.</p> <p>18 A -- with BBPOS?</p> <p>19 Q Yes.</p> <p>20 A Eventually, there was, which -- which was --</p> <p>21 eventually there was, which was a concern</p> <p>22 that I had brought up in the complaint.</p> <p>23 Q Okay. And you voiced that concern to Ben Lo</p> <p>24 as well?</p>

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<p>1 A Yeah.</p> <p>2 MR. KESSLER: Give me a -- let's take</p> <p>3 a break for two minutes. Let me think if I</p> <p>4 have any other questions I want to ask you.</p> <p>5 VIDEOGRAPHER: The time is 4:55 p.m.</p> <p>6 We're off record.</p> <p>7 (Whereupon, the parties go off the record.)</p> <p>8 VIDEOGRAPHER: The time is 4:58 p.m.</p> <p>9 We're on record.</p> <p>10 BY MR. KESSLER:</p> <p>11 Q So subsequent to your departing -- oh, I'm</p> <p>12 sorry, are you ready?</p> <p>13 A Okay.</p> <p>14 Q So subsequent to your departing ROAM, did you</p> <p>15 have conversations with Mr. Rotsaert about</p> <p>16 his sending -- about a statement that he'd</p> <p>17 sent ROAM and BBPOS designs and intellectual</p> <p>18 property to Ingenico for Ingenico to build</p> <p>19 some reader?</p> <p>20 A Subsequent, after I left?</p> <p>21 Q Yes.</p> <p>22 A I don't remember.</p> <p>23 Q Okay. Have you had dealings with Mr.</p> <p>24 Rotsaert since you left ROAM?</p>	<p>1 A Yeah.</p> <p>2 Q -- recognize the document, that's fine.</p> <p>3 A Yeah.</p> <p>4 Q As you just alluded to, did you -- do you</p> <p>5 know if you received or allowed someone to</p> <p>6 received a subpoena on your behalf?</p> <p>7 A Yeah. I mean, somebody came by my house when</p> <p>8 I was at the office. I told him that he</p> <p>9 could just drop it off but, yeah, that was a</p> <p>10 few days ago.</p> <p>11 Q Okay. So I'm going to hand you what's been</p> <p>12 pre-marked as Exhibit 15. If you'll look at</p> <p>13 this document, in particular, just a couple</p> <p>14 of pages in. Right after Exhibit A, do you</p> <p>15 see how it says, "Subpoena to testify at a</p> <p>16 deposition in a civil action"? Is this the</p> <p>17 document you were referring to before?</p> <p>18 A Yeah, I think this is what somebody tried to</p> <p>19 drop off for me.</p> <p>20 Q Okay. And you had a telephone conversation</p> <p>21 with --</p> <p>22 A Right.</p> <p>23 Q -- that person and said that they --</p> <p>24 A You can just drop it off, yeah.</p>
Page 103	Page 105
<p>1 A I don't recall other than, you know, we had</p> <p>2 litigation that went on for, you know,</p> <p>3 probably a good year and-a-half plus, so --</p> <p>4 yeah, I don't remember having -- having, you</p> <p>5 know, direct interactions with him.</p> <p>6 MR. KESSLER: Okay. I don't have any</p> <p>7 further questions. Thank you very much. I'm</p> <p>8 sure he has a whole bunch.</p> <p>9 MR. WRAY: I do. I hope to go</p> <p>10 quickly and I hope to let you make your</p> <p>11 flight.</p> <p>12 CROSS EXAMINATION</p> <p>13 BY MR. WRAY:</p> <p>14 Q First thing I want to hand you is what's been</p> <p>15 pre-marked as Exhibit 14. This is a cross</p> <p>16 notice of deposition in this matter. Did you</p> <p>17 receive this before today, Mr. Graylin?</p> <p>18 A No.</p> <p>19 Q Via e-mail, have you ever seen this before?</p> <p>20 A Cross notice. Yeah, I noticed somebody tried</p> <p>21 to serve me. Is that what this is --</p> <p>22 earlier?</p> <p>23 Q I'll move on to the next question. If you</p> <p>24 don't --</p>	<p>1 Q Okay. Thank you. Now, I'm handing you</p> <p>2 what's been pre-marked as Exhibit 16. When</p> <p>3 you had that telephone conversation before</p> <p>4 with the individual -- by the way, do you</p> <p>5 remember their name -- his or her name?</p> <p>6 A Yeah. Somebody left me a voice mail and I</p> <p>7 called him back.</p> <p>8 Q Was it Keith?</p> <p>9 A I think it was Keith.</p> <p>10 Q Keith Wheeler (phonetically spelled)?</p> <p>11 A Yeah.</p> <p>12 Q Okay. Did you tell Keith he could leave the</p> <p>13 subpoena with Alex Graylin?</p> <p>14 A Yeah.</p> <p>15 Q Okay. Who is Alex Graylin?</p> <p>16 A He's my son.</p> <p>17 Q Okay. I would like to go back to what</p> <p>18 opposing counsel marked as Exhibit 1.</p> <p>19 A Okay.</p> <p>20 Q It's the engineering, development, and</p> <p>21 license agreement. So this says it was made</p> <p>22 as of about May 4, 2010, right?</p> <p>23 A Uh-huh.</p> <p>24 Q So that's well over a decade ago from now,</p>

<p style="text-align: right;">Page 142</p> <p>1 Q And whatever you concluded wasn't exclusive</p> <p>2 in the document is what you were potentially</p> <p>3 going to sell with Ben, right?</p> <p>4 A Yes. That would --</p> <p>5 Q Okay.</p> <p>6 A -- that would be the case, but that was a</p> <p>7 very -- very cursory exploration.</p> <p>8 Q Sure.</p> <p>9 A Yeah.</p> <p>10 Q Did it -- during the previous questioning,</p> <p>11 Mr. Kessler showed you an e-mail. It was</p> <p>12 from, I think, January 2013 or thereabouts?</p> <p>13 A Uh-huh.</p> <p>14 Q I'll try to pull that one up. Exhibit 11.</p> <p>15 Could you turn to Exhibit 11?</p> <p>16 A Yep.</p> <p>17 Q Okay. So in this e-mail you're talking with</p> <p>18 him about how you're free to compete with</p> <p>19 ROAM because of some language in your</p> <p>20 contract, right? Do you see that, like --</p> <p>21 A Uh-huh.</p> <p>22 Q -- three or four paragraphs down?</p> <p>23 A Yeah.</p> <p>24 Q And this is you discussing with him this</p>	<p style="text-align: right;">Page 144</p> <p>1 Good to see them admit it," right?</p> <p>2 A Uh-huh.</p> <p>3 Q And again, you're saying this during the time</p> <p>4 that you're exploring the possibility of</p> <p>5 selling these devices with Ben Lo, right?</p> <p>6 A Yeah. But that was also my belief that the</p> <p>7 EMV was not exclusive.</p> <p>8 Q Earlier we discussed how you shared with Mr.</p> <p>9 Lo your feelings about how you believe Mr.</p> <p>10 Rotsaert improperly shared intellectual</p> <p>11 property with Ingenico, right?</p> <p>12 A (No verbal response.)</p> <p>13 Q This complaint was from November of 2012,</p> <p>14 right?</p> <p>15 A (No verbal response.)</p> <p>16 Q Did you delay from filing the complaint to</p> <p>17 talking about these things with Mr. Lo?</p> <p>18 A Did I delay -- did I talk to Mr. Lo after I</p> <p>19 filed the complaint?</p> <p>20 Q Right.</p> <p>21 A Yes.</p> <p>22 Q Okay. What did he say when you shared these</p> <p>23 allegations or thoughts or concerns?</p> <p>24 MR. KESSLER: Objection. Content.</p>
<p style="text-align: right;">Page 143</p> <p>1 potential venture for selling other mobile</p> <p>2 point of sale products, right?</p> <p>3 A Yeah. This is part of the exploration that I</p> <p>4 told you.</p> <p>5 Q Right. And so at this time that he sends you</p> <p>6 an e-mail saying -- and this is on the third</p> <p>7 page of the document, he sends you an e-mail</p> <p>8 basically saying that Ken Paull says that the</p> <p>9 ROAM-BBPOS agreement only does the swiper,</p> <p>10 and not the EMV or NFC, right?</p> <p>11 A Correct.</p> <p>12 MR. KESSLER: Objection. The</p> <p>13 document speaks for itself.</p> <p>14 MR. WRAY: You're lucky I didn't pull</p> <p>15 that objection out during your examination.</p> <p>16 MR. KESSLER: What are you</p> <p>17 insinuating?</p> <p>18 MR. WRAY: That you just used the</p> <p>19 documents a lot.</p> <p>20 MR. KESSLER: Yeah, but I didn't</p> <p>21 misquote them.</p> <p>22 Q On Page 1, you say here, "Yes, I have told</p> <p>23 Ken Paull and others at ROAM and Ingenico</p> <p>24 that EMV/NFC is not part of the exclusivity.</p>	<p style="text-align: right;">Page 145</p> <p>1 Q Strike that. What did he say when you shared</p> <p>2 these concerns?</p> <p>3 A What did he say -- I don't really recall but</p> <p>4 we had some e-mail exchanges, and, you know,</p> <p>5 we were just trying to figure out whether</p> <p>6 there's -- there is, you know, any business</p> <p>7 that we could do. I was trying to be helpful</p> <p>8 if I could, and I think, you know, it's no</p> <p>9 secret about my, you know, my concerns at the</p> <p>10 time and -- and which is what led to the --</p> <p>11 to the litigation.</p> <p>12 Q All right.</p> <p>13 A Yeah.</p> <p>14 Q But do you remember, I mean, you're saying</p> <p>15 that you spoke with him, and you said</p> <p>16 basically you were concerned that Chris</p> <p>17 Rotsaert shared BBPOS IP with Ingenico,</p> <p>18 right?</p> <p>19 A (No verbal response.)</p> <p>20 Q Sorry, you have to say yes or no for the --</p> <p>21 A Yes.</p> <p>22 Q -- record. Do you remember him having a</p> <p>23 reaction of any kind to this?</p> <p>24 A I mean, I think we were just lamenting the,</p>

<p style="text-align: right;">Page 146</p> <p>1 you know, the challenges that I went through, 2 being terminated by -- terminated by Ingenico 3 and, of course, he still had a relationship 4 with Ingenico that, you know, he needs to and 5 wants to maximize. So to the extent that, 6 you know, he has a contract with Ingenico, he 7 needs to carry that forward. And, you know, 8 my personal -- my personal complaint and all 9 of the rest of the minority shareholders' 10 complaint, you know, somewhat is a separate 11 case from what he has to deal with as a 12 supplier for -- for ROAM and for Ingenico. 13 And ROAM, if you recall at the time, 14 was still considered technically 74 percent 15 owned by -- owned by Ingenico, but the rest 16 of the minority shareholder, you know, at 17 that time was still kind of left hanging out 18 there. And it wasn't until later that the 19 acquisition -- the rest of the shares were 20 acquired, you know, with a fair market value 21 and so forth, that it finally got settled. 22 So there was definitely a -- a -- I guess, an 23 unsettled -- unsettled shareholder dispute 24 that needed to be resolved.</p>	<p style="text-align: right;">Page 148</p> <p>1 and you actually have it in front of you. 2 Could you turn to the document that has 811 3 at the bottom right? 4 A Okay. 5 Q And you see where it says "To ROAM/Ingenico 6 realities"? 7 A Yep. 8 Q It's kind of in the middle of that paragraph. 9 Do you see where it says, "The attached 10 public record of the suit can be useful to 11 you in multiple ways"? Is that you sending 12 the complaint to Mr. Lo? 13 A The public records of the suit -- "The 14 attached public records of the suit can be 15 useful to you in multiple ways." Yeah. 16 Q All right. Did you ever work with a customer 17 and entity called First Data? 18 A Yeah. They were, you know, a client. 19 Q A client of which company? 20 A ROAM Data. 21 Q Do you know when they became a client? 22 A I don't recall. 23 Q But they were a client during the time that 24 you were there?</p>
<p style="text-align: right;">Page 147</p> <p>1 Q Uh-huh. So is it fair to say you don't 2 remember Ben's exact words to you when you 3 disclosed -- 4 A I don't -- 5 Q -- this? 6 A -- I don't remember that, you know, exact 7 interaction or the conversation and how he 8 reacted and so forth. But I just remember 9 having a -- having a dialogue and sharing -- 10 Q And this -- 11 A -- my information. 12 Q And the substance of the conversation 13 included his reaction that he has an ongoing 14 relationship with Ingenico, right? 15 A Yeah. Clearly, he has -- he has an 16 obligation as well as an incentive to make 17 sure that that relationship works. And I 18 recognize that and I -- I also had a 19 incentive to make sure that that 20 relationship, you know, continues because, 21 you know, I was still a shareholder of ROAM 22 Data at the time. 23 Q Uh-huh. Pardon me, I just want to find a 24 document that's in here. This is Exhibit 11,</p>	<p style="text-align: right;">Page 149</p> <p>1 A I wonder if they actually bought -- well, 2 they were one of the major POS providers, but 3 I don't know if we actually sold directly to 4 them. They were not one of our big clients, 5 but they were a significant merchant service 6 provider. So how did we work with them? We 7 may -- we may -- we may be -- we may be 8 interacting with their gateway for -- but I 9 don't know if they ordered any products from 10 us. But I do think that we connected to 11 their gateway or to their acquiring 12 processor. 13 Q So you were familiar with them from the time 14 you were at ROAM? 15 A Oh, yeah, yeah. I knew -- 16 Q Okay. 17 A -- I knew First Data. 18 Q Were you familiar with an RFP from them for 19 something called Pogo, P-O-G-O? 20 A Vaguely. I don't -- I don't recall. 21 Q Okay. 22 A That's not in Exhibit 11, is it? 23 Q No. Thank you. I'm going to show you a 24 document marked as Exhibit 19. You can take</p>

<p style="text-align: right;">Page 170</p> <p>1 appear to be the same document.</p> <p>2 THE WITNESS: Yeah, it's a different</p> <p>3 -- different --</p> <p>4 MR. WRAY: Okay. It's a data --</p> <p>5 THE WITNESS: -- different schematic.</p> <p>6 Yeah.</p> <p>7 MR. KESSLER: Are you referring -- in</p> <p>8 your objection, were you referring to the</p> <p>9 schematic or to the data output format</p> <p>10 document?</p> <p>11 MR. KESSLER: Data output format</p> <p>12 document.</p> <p>13 MR. WRAY: Okay.</p> <p>14 MR. KESSLER: Just so the record's</p> <p>15 clear, the first one has 15 pages and the</p> <p>16 second one, I think, has 13 pages.</p> <p>17 BY MR. WRAY:</p> <p>18 Q And if you could turn to Page 9666.</p> <p>19 A Okay. 9666.</p> <p>20 Q It should just say "Produced in" --</p> <p>21 A Yep.</p> <p>22 Q -- "native form." And then in the following</p> <p>23 page -- one, two, three pages, I'm going to</p> <p>24 ask you about those.</p>	<p style="text-align: right;">Page 172</p> <p>1 A I can't confirm that, no.</p> <p>2 Q Okay. And you don't know whether ROAM used</p> <p>3 any of BBPOS' IP to create their own devices,</p> <p>4 right?</p> <p>5 A Not after I left, no.</p> <p>6 Q When you say that, so you're saying that</p> <p>7 while you were there they used some of BBPOS'</p> <p>8 IP in their own devices, correct?</p> <p>9 A Yes. BBPOS was helping make the devices that</p> <p>10 we used.</p> <p>11 Q So it was pursuant to -- to your</p> <p>12 understanding, the agreement with BBPOS,</p> <p>13 correct?</p> <p>14 A Correct.</p> <p>15 Q Okay. And you aren't familiar with any use</p> <p>16 of BBPOS' IP while you were at ROAM that</p> <p>17 wasn't in compliance with the agreement,</p> <p>18 correct?</p> <p>19 A Correct.</p> <p>20 Q Earlier we discussed your thoughts about a</p> <p>21 potential acquisition or investment in your</p> <p>22 partnership with HomeATM, right?</p> <p>23 A (No verbal response.)</p> <p>24 Q Did you ever fake an interest in acquiring</p>
<p style="text-align: right;">Page 171</p> <p>1 A Uh-huh. The phones supported?</p> <p>2 Q Yeah. So do you know what that list</p> <p>3 represents?</p> <p>4 A I think it just represents iOS and Android</p> <p>5 phones on the market at that time that were</p> <p>6 able to be supported.</p> <p>7 Q Okay. So when you wrote to Mr. Rotsaert, and</p> <p>8 when you wrote to Mr. Coonen, and Mr. Lazare</p> <p>9 about concerns about having IP transferred to</p> <p>10 Ingenico, you were referring to the documents</p> <p>11 that we just went through, right?</p> <p>12 A Yes.</p> <p>13 Q Okay. Do you know if Ingenico Valence ever</p> <p>14 developed any mobile point of sale devices?</p> <p>15 A I do not, no.</p> <p>16 Q Actually, I should back up. What is Ingenico</p> <p>17 Valence?</p> <p>18 A I think they're an R&D center.</p> <p>19 Q Okay. And what does -- do you know what</p> <p>20 Valence refers to?</p> <p>21 A The location.</p> <p>22 Q And you don't know that Ingenico actually</p> <p>23 used any IP from BBPOS to create their own</p> <p>24 devices, right?</p>	<p style="text-align: right;">Page 173</p> <p>1 HomeATM for any purpose?</p> <p>2 A Well, I don't know what you mean by, fake an</p> <p>3 interest?</p> <p>4 Q Did you ever pretend to have an interest in</p> <p>5 acquiring or working with HomeATM for the</p> <p>6 purpose of acquiring confidential information</p> <p>7 from them?</p> <p>8 A Not for the purpose of acquiring confidential</p> <p>9 information so much as just making sure that</p> <p>10 we were able to -- we were able to, you know,</p> <p>11 license from the rightful owner because there</p> <p>12 were cross-claims as to, you know, whether</p> <p>13 they own it, whether BBPOS own it, which is</p> <p>14 ultimately why we, you know, why I asked Ben</p> <p>15 to even lay out all of it. So, you know, I'm</p> <p>16 not going to deny anybody that says, you</p> <p>17 know, they own the IP unless it's really</p> <p>18 clear that either they don't own it, in which</p> <p>19 case we don't need to deal with them. If</p> <p>20 they do own it, we should continue to have a</p> <p>21 dialogue until we sort out the truth, so --</p> <p>22 Q Do you know when, if ever, Ben began working</p> <p>23 with HomeATM?</p> <p>24 A Well, according to the -- Ben's own</p>